

ISSUE DATE: January 16, 1997

DOCKET NO. E-002/AI-96-1063

ORDER GRANTING VARIANCE, APPROVING CONTRACT, AND CLARIFYING
FUTURE APPLICABILITY OF COMPETITIVE BID PROCESS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Marshall Johnson
Dee Knaak
Mac McCollar
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition for Approval of an
Energy Services Agreement Between
Northern States Power and Cenerprise,
Incorporated Pursuant to Minn. Stat. §
216B.48 and Minn. Rules, Part 7825.2200

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PROCEDURAL HISTORY

On September 10, 1996, Northern States Power (NSP) filed a request for approval of an energy services agreement under the affiliated interest statute, Minn. Stat. 216B.48.

On November 12, 1996, the Minnesota Department of Public Service (the Department) filed its comments.

On December 19, 1996, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. NSP's Request

NSP sought Commission approval for an agreement with its affiliate, Cenerprise, for the provision of energy management services to the St. Paul Post Office.

Because NSP requested approval of the contract after it was completed, NSP also sought a variance to the applicable rules.

B. The Department's Comments

The Department recommended approval of a variance to the "prior approval" rule, Minn. Rules, Part 7825.2100. The Department also recommended that the agreement between NSP and Cenerprise be approved with the recommendation that the Commission require NSP to submit any information used by NSP to make their determination concerning the appropriateness of the disputed charges with Cenerprise, once that dispute is resolved.

The Department stressed in its discussion that the Company should make every effort to submit any subsequent agreements or contracts between affiliates and NSP prior to their execution. The Department pointed out that later phases of this project may reach up to \$15 million, potentially leading to greater ratepayer risks from prior execution of any upcoming agreements.

C. Commission Action

1. Competitive Bidding

Minn. Rules, Part 7825.2200, B (5) requires competitive bidding information be included with petitions seeking approval of affiliated interest agreements as follows:

- (a) if invitations for sealed written public proposals for the furnishing of the service sought under the contract or agreement have been made, a summary of the terms of the proposals received, including the name of each bidder or representative of a bidding group; and as an exhibit to the petition, a copy of each proposal received;
- (b) if invitations for sealed written proposals have not been made, an explanation of the decisions to that effect will be submitted.

NSP acknowledged that it had not used a competitive bidding process before contracting with Cenerprise for preliminary audit and feasibility study services. The Company stated that it decided to do so because of the unique nature of the proposal, the opportunity for Cenerprise to expedite service without a bid, and the previous experience and expertise of Cenerprise. The Company assured that Cenerprise had not received preferential treatment.

The Commission historically has considered competitive bidding an important element in determining whether dealings between the utility and its subsidiaries are in the public interest. Absent competitive bids, it is very difficult for the Commission to determine whether the services offered and the terms of the agreement are representative of the market. This is because the dealings between a company and a subsidiary of the same company are not generally held to be “arms-length” transactions.

Nevertheless, the Department has apparently agreed with the Company’s reasons for not seeking competitive bids and no other party has raised concern in this proceeding. In addition, the contract in question is small when compared with the total amount to be awarded as the Company's project with the St. Paul post office continues. In these circumstances, the Commission will accept the Department’s recommendation.

The Commission notes, however, that later phases of this project may reach up to \$15 million, potentially leading to greater ratepayer risks from prior execution of any upcoming agreements. The Commission emphasizes, therefore, that it will expect strict compliance with the affiliated interest rules with respect to the competitive bidding requirements in future affiliated interest matters. Competitive bids must be taken, where appropriate, before awarding additional contracts to the Company’s affiliates as the post office project continues.

2. Prior Approval

The Company's request for approval of the affiliated contract with Cenerprise did not comply with the Commission's prior approval rule, Minn. Rules, Part 7825.2100. However, as the Department recommended, grounds for a variance from that requirement exist and the Commission will grant the Company's request for such variance, pursuant to Minn. Rules, Part 7829.3200.

The Commission clarifies, however, that any additional agreements entered between NSP and its affiliates in this project remain subject to the filing and prior approval requirements of Minn. Rules, Part 7825.2100.

ORDER

1. NSP is hereby granted a variance from the "prior approval" rule, Minn. Rules, Part 7825.2100, with respect to the contract with Cenerprise addressed in this Order.
2. NSP's agreement with Cenerprise for work performed on the preliminary audit and feasibility phases of the St. Paul Post Office project is approved.
3. NSP shall submit any information used in determining the appropriateness of the disputed charges when the dispute is resolved.
4. Any additional agreements entered between NSP and its affiliates in this project must be timely filed. Also, competitive bids, where appropriate, shall be taken and included with any future filings of affiliated interest agreements related to the post office project.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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